

**MANAGEMENT LABOR ADVISORY COMMITTEE
VOCATIONAL REHABILITATION SUBCOMMITTEE
Tuesday, May 11, 2004
Conference Room C, Labor and Industries Building, Salem, OR**

Subcommittee Members Present:

Sheri Sundstrom, Hoffman Construction Company, Portland, OR
Ken Hector, CNF Service Company, Portland, OR
Bob Shiprack, Oregon Building Trades Council, Tualatin, OR
John Kirkpatrick, IUPAT District Council #5, Portland, OR
Mike O'Rourke, Plumbing and Steamfitters UA 290, Tualatin, OR

Subcommittee Member Absent:

Diane Janzen, NorPac Foods, Lake Oswego, OR

Staff Present:

Myrna Curzon, Director's Office
Jerry Managhan, Workers' Compensation Division
Mike Manley, Information Management Division
Lou Savage, Director's Office
John Shilts, Workers' Compensation Division
Barbara Smith, Workers' Compensation Division
Travis Wall, Ombudsman for Injured Workers

REVIEW MINUTES FROM APRIL SUBCOMMITTEE MEETING

Sheri Sundstrom called the meeting to order at 10:00 a.m.

Ken Hector made a motion to accept the April 7, 2004 minutes as submitted. The motion was seconded by John Kirkpatrick. Sheri Sundstrom, Ken Hector, Bob Shiprack, John Kirkpatrick, and Mike O'Rourke, all voted to accept the minutes as submitted. The April 7, 2004 minutes were approved.

INPUT FROM INSURERS ON VOC REHAB OPTIONS

Chris Davie and Lisa Wilch, SAIF Corporation

The committee expressed interest in internal SAIF procedures for identifying potential workers who would be eligible for vocational assistance

Lisa Wilch, SAIF Vocational coordinator, explained to the subcommittee the internal procedures used at SAIF for identifying potential workers who may be eligible for vocational assistance. Certified staff manage the vocational aspect of the claim. The southern regional area is piloting a program called early vocational staffings. A vocational coordinator is alerted by the assigned claims adjuster that there is a claim that might lead to vocational eligibility. The staffing is conducted with the claims adjuster, the assigned vocational coordinator, a claims supervisor, and possibly a nurse depending on the level of disability of the worker. Staff reviews the facts of the claim and reviews whether or not there are missing key pieces of information that might be helpful in the vocational process, i.e. work history, regular job description, job analysis, etc. The southern region has return to work consultants in Medford so they are conferenced in on the early staffing. SAIF staff works with the employer at injury if they don't believe they will be able to provide modified employment for the injured worker to let them know what they might expect in the way of reserves. The goal is always to try to preserve the relationship that the employee has with their employer. Staff assesses the worker's cooperation with their medical treatments i.e. missing appointments, looking for signs that the worker is not cooperating. Staff looks at the possibility of need for further medical assessments from the attending physician or the need to go to an independent source for medical assessment as well as looking at whether or not the claim looks like it may be

PTD. If so, the claim may be transferred to the critical claims unit. Early optional vocational assistance, i.e. GED may begin. Staffing is done usually once. Other geographic areas do similar early evaluations but it may not be as formal as the process described for the south area. This pilot has been going since last July. This pilot program is being looked at for implementation in other geographic areas with variations based on the specific needs of the area.

The Early Vocational Staffing is initiated if we know we are having problems with return to work with the employer at injury, if we know that the employer does not have any job that would work for the injured worker and if we can project the amount of disability that the worker may have. It is generally about 90 days from the date of injury to the Early Vocational Staffing. Some occur before 90 days and some after depending on the injury and type of medical condition.

Using the early staffings allows SAIF to determine the need for vocational rehabilitation assistance before the time of medically stationary. The problem SAIF continues to deal with is getting the physician to determine early the patient's abilities. At the initial staffing SAIF may also determine the need for follow-up staffings. Staffings end at regular work release or settlement.

John Kirkpatrick: Does the timeline for determination of substantial handicap change the plan of action?

Lisa Wilch: We always try to step in earlier rather than waiting for determination of medically stationary. We seldom get a request for voc rehab, but that is increasing. I see the attorneys getting involved earlier now that the attorneys are getting attorney fees.

Chris Davie: The goal is getting people back to productive employment. The best choice is to get the person back with the employer they were with at injury if you can do that, possibly with a modification to the job. A lot of the ideas presented are good and we agree with the majority or come close to agreement with the majority. Our biggest concern is eliminating the substantial handicap definition that is in statute today. We believe it would affect 200 cases per year for SAIF. We think that the number of people who would become eligible would be higher than the estimate that was given by WCD. If training programs were free then there wouldn't be a problem with that. Under Oregon average weekly wage the cost of training would be about \$50,000. Estimates did not include the cost of the training or the time loss benefits.

John Kirkpatrick: Asked for clarification on the numbers. If there are 200 SAIF cases and SAIF represents about 40% of the market, that translates to 500 total cases statewide. The substantial handicap test is based on 80% of wage at injury. How does that work when we hear that majority of injured workers are minimum wage earners and you used the average weekly wage?

Chris Davie: We just picked the average weekly wage because it is an average.

Lou Savage asked about SAIF's response to the recommendation that the worker meet with someone prior to a CDA

Chris Davie: SAIF supports the worker meeting with someone about how CDA will affect their benefits.

Shirley Butcher, Senior Rehabilitation Coordinator SAFECO

SAFECO has done a good job of involving the employer at injury. We think that everything needs to continue in that direction. From the carrier's perspective we must protect our own company as well as our employers. The best interest of everyone is to get the person back to suitable and gainful employment as soon as possible. SAFECO is a smaller company than SAIF. They try to coordinate along with the adjustor early on. When it is appropriate to have more than a phone call SAFECO uses private sector rehab counselors. We educate the adjusters and emphasize working with the employer from the adjustor perspective. SAFECO is supportive of early intervention within whatever is the appropriate time to get them back to work. SAFECO focuses on

educating employers so that employers are doing early intervention themselves and looking to SAFECO for assistance.

Within 8 hours of the claim SAFECO contacts both the employer and the injured worker, asking the employer if they will be able to bring the worker back to some kind of appropriate work. SAFECO does not insure loggers, mining or heavy industries. They insure lighter manufacturing, industries in which most employers can take the injured workers back.

Bob Shiprack asked about SAFECO's experience looking for private rehab counselors. What do you look for, what is the availability, are you happy, unhappy?

Shirley Butcher: SAFECO looks for a counselor who does not use a checklist method doing everything the same on every case. They look for someone who is being creative. They want to see someone who meets with the worker, who has a plan and a timeline and can explain why they did not accomplish the plan and what else they are doing to accomplish that. SAFECO wants to see a counselor who knows what the rules are. SAFECO has not had any problems with availability of voc rehab counselors. They do sometimes have to pay someone to travel to the more rural areas. Shirley mentioned that she is not convinced that the best way to use money is to put more people in more training programs. They suggested possibly setting up more categories in mandatory voc that would encourage job search and job development.

Suzanne Barr, Manager Vocational Rehabilitation Unit Liberty NW

Suzanne suggested that the committee look at services provided in other states. What we do in Oregon outshines what is done in other states. Bringing the worker back to their employer at injury is important to our program as well as keeping them in the industry they are used to. We start working with injured workers within 4 weeks of time loss. We have nurses who manage this program. They work with the attending physician. We have initiated a pilot program this spring for early intervention. The plan is to take it throughout the state by fall. Talking about training too early can sidetrack from getting the person back to the employer at injury. The problem Liberty NW has encountered is waiting for the doctor to project a plan for the injured worker. Sometimes the physicians are not ready to project what the permanent limitations are going to be. If the person has been doing a medium duty job and the physician is not ready to say that the person is only going to be able to do light work, there is hesitation in the industry to push forward at that time.

John Kirkpatrick: When you are convinced that the person is not going to be able to go back to the employer at injury, is there any point when you don't have to wait for the physician to state the limitations? Is there some point where you can go forward?

Suzanne Barr: We can do some preliminary vocational search and get the worker's interests. If we have a worker who is interested in getting their GED we provide that assistance. There are some things that can be done.

John Kirkpatrick: Would you be supportive of looking at other programs—ie preferred worker program—expanding that?

Suzanne Barr: We need to look at the numbers. I think there is compromise we can come to.

Grace Smith, Vocational Counselor representing the OARP Board

The OARP board is comprised of 20 people with very divergent opinions. The insurers you have heard from are the most proactive insurers in the state for working early to get the workers back to work and working with the employers at injury. There are insurers who are not as proactive as these insurers are. Some insurers must be forced to comply with the laws relating to sending the worker for an eligibility evaluation. Oregon has the preferred worker program as well as the employer at injury program and we want to support that ongoing ability to provide these benefits to workers and their employers.

Bob Shiprack: Maybe the committee needs to look at compliance with existing laws and rules.

John Shilts: WCD has been working on our field audit methodology and will be adding eligibility to our field audits.

Bob Shiprack asked the Injured Worker Ombudsman if they are hearing complaints about these voc issues.

Travis Wall , Injured Worker Ombudsman offered to bring a report to the next meeting.

Scott Wroot: Expressed concern that the Voc rehab is tied to geographical areas. In a depressed area you take someone who is earning \$3,000 and above and they are no longer able to do their job at injury and you give them 16 months of voc rehab but cannot train them well enough in 16 months to earn the salary they were earning before.

John Kirkpatrick: We want to look at the effectiveness of the money we are spending and whether or not we are looking at voc rehab early enough.

John Shilts, WCD Administrator and Barbara Smith, WCD Assistant Manager, RDRSS

Barbara Smith reviewed with the committee the handout titled "Vocational Options - Revised"

Sheri Sundstrom expressed concern in how creating a permanent light duty job would work with union contracts.

Bob Shiprack: There may be a problem when there are seniority contracts.

John Kirkpatrick asked WCD to explain the x% discount referred to under the section Comprehensive Models.

John Shilts: If they provide suitable permanent modified employment then they pay less on the work disability benefit. We need to look at how we would monitor that.

With the change of definition for substantial handicap the worker would be eligible for DEP. There would be rules that allow and encourage Job club for DEP in which workers meet together and share information about jobs with other injured workers, work on job seeking skills, interview practice. One of the goals the subcommittee asked us to work with was to reduce the time lags in the system. If the EAI does not offer modified employment to the worker then the worker should be eligible for vocational training until the employer finds that they can offer work.

Barbara explained the calculations on page 3 using the latest data from IMD.

John Shilts: These numbers are based on the assumption that we would be keeping the substantial handicap definition but changing to 100% of the wage at injury. The majority of workers come in at less than the state average weekly wage. We will get the number for you of the average wage of Oregon injured workers.

Barbara Smith: The average ATP is not 16 months. It is somewhere between 11-12 months.

John Shilts: It is important to us that we do not over-inflate or under-inflate these numbers. These will affect what happens to our pure premium rates. We are not trying to under-inflate this.

John Kirkpatrick: Have we talked about that the determination of substantial handicap adds to the timeline?

Sheri Sundstrom: 45 days--even if you did away with that one small portion you still have to do the evaluation.

John Shilts: This that takes a lot of time -- 203 days to get a worker into a plan. These are workers that in a lot of cases do not have any other income. The proposal is to try to move that timeframe back so that the worker has some income going. There was an earlier proposal about the 60 day referral. There is nothing magical about the number 60. The idea was to move vocation assistance provisions up in the claim. You could choose a different triggering mechanism. Waiting until the worker's claim is closed to begin that process puts the worker into a position that is very difficult. The workers who CDA their claims are the workers who are doing the worst. But if you are sitting there for 204 days waiting to get some money then a CDA looks more attractive. The general rule would be at "xx" days you would start the process unless there are compelling reasons not to do so.

Committee members expressed concern about an arbitrary time limit as well as a triggering mechanism that could be very subjective. The committee discussed the history of changes in the timelines as well as other changes such as the EAI program. The need for educating employers was also discussed.

Sheri Sundstrom invited the insurer representatives present to share what they do with respect to educating employers.

Lisa, SAIF: We invite employers to a workers' comp chat with a workers' comp consultant and give them \$ examples about how the program works.

Suzanne Barr, Liberty NW: We train the employer and then with turnover someone new comes in. If we are not constantly vigilant it is hard to connect with everyone. We have seminars and we have it on the web, but we still see in the numbers that they are not taking advantage of the program.

Ken Hector: Emphasis could be done before the policy is issued. i.e. "If you want to cooperate this is the package that you are going to get and if you don't cooperate then this is the package you are going to get." The EAI program needs to be sold by the agents and brokers.

Committee members discussed briefly the small employer who does not have the ability to make adaptations, concern for the worker that you know is not going to go back to work, the optimistic worker who does not want to face switching careers and efforts to get the injured worker to a vocational counselor at the right time.

Stakeholders were asked to submit comments on the most recent document from WCD by Friday, May 14th. WCD was asked to prepare a summary of areas where there is consensus and areas where there is not consensus and get a draft to the committee by Thursday, May 20th. The subcommittee will meet at 10am on May 26th.

The meeting adjourned at 11:45 a.m.